

Casino Patron Protection Act
TORT CLAIMS ORDINANCE
Of The Hoopa Valley Tribe

Title 62

ORDINANCE NO: 02-00

DATE APPROVED: July 20, 2000

SUBJECT: Tort Claims Procedures for Negligent Acts or Omissions by The Lucky Bear Casino also known as Casino Patron Protection Act.

WHEREAS: The Hoopa Valley Tribe adopted its Constitution and Bylaws on June 20, 1972, approved by the Commissioner of Indian Affairs on August 18, 1972, confirmed and ratified by the United States Congress in October, 1988, in Public Law 100-580, the Hoopa-Yurok Settlement Act, and thereafter amended on June 18, 1996;

WHEREAS: The Hoopa Valley Tribal Council is the governing body of the Hoopa Valley Tribe;

WHEREAS: The Hoopa Valley Tribal Council is authorized to promulgate and enforce ordinances governing the conduct of members and nonmembers of the Hoopa Valley Indian Tribe;

WHEREAS: The Tribe has limited financial resources available to it to pay claims made against it for money or damages;

WHEREAS: To ensure a timely and effective means of resolving claims against the Tribe without the necessity of litigation, an administrative claims procedure needs to be established by the Tribe;

WHEREAS: An administrative claims procedure that requires the presentation of a claim to the Tribal Council, prior to filing suit against the Tribe, will reduce litigation against the Tribe, protect Tribal assets, and expedite the payment of legitimate claims and money damages due members of the public arising from breaches of contract or the negligent acts of Tribal employees.

WHEREAS: The Hoopa Valley Tribe and the State of California entered into a tribal-state gaming compact pursuant to the Indian Gaming Regulatory Act (25 U.S.C. § 2701 *et seq.*) in September, 1999;

WHEREAS: The voters of California approved Proposition 1A on March 7, 2000 thereby amending the California Constitution to authorize the scope of gaming contained in the tribal-state gaming compact;

WHEREAS: The tribal-state gaming compact at Section 10.2(d) requires the Tribe to maintain five million dollars in public liability insurance for patron claims and that the Tribe provide reasonable assurance that those claims will be promptly and fairly adjudicated, and that legitimate claims will be paid;

WHEREAS: The tribal-state gaming compact requires the Tribe to adopt and make available to patrons a tort liability ordinance describing the procedures for processing any claims for money damages;

NOW, THEREFORE, BE IT RESOLVED THAT: the enactment of this Ordinance promotes the public health, safety, and welfare and is in the public interest.

BE IT FURTHER RESOLVED THAT: the Tribal Council hereby adopts the following Tort Claims Ordinance in order to comply with the requirements of the tribal-state gaming compact.

§ 62.1 SHORT TITLE

This Ordinance shall be known as the Casino Patron Protection Act or Tort Claims Ordinance or Title 62.

§ 62.2 SCOPE

The scope of application of this Ordinance shall be limited to claims arising out of negligent acts or omissions of the Lucky Bear Casino except for claims preempted by Tribal law, including, but not limited to claims made pursuant to the Tribal Employment Rights Ordinance.

§ 62.3 PURPOSE

The purpose of this Ordinance is to establish a timely and effective administrative procedure by which any person who believes the Tribe owes them money as a result of an injury to person or property caused by a negligent act of a Tribal employee is required to submit an administrative claim to the Tribal Council on a form approved by the Tribal Council for that purpose and to allow the Tribal Council to consider the merits of the claim and either approve or reject the claim as a precondition to the claimant filing a lawsuit against the Tribe.

§ 62.4 DEFINITIONS

62.4.1 “Council” or “Tribal Council” means the Hoopa Valley Tribal Council as established by the Hoopa Valley Tribal Constitution and Bylaws.

62.4.2 An "Award" is the financial remedy offered a Claimant by the Tribal Council or Tribal Gaming Agency to resolve a Certified Claim timely filed under this Ordinance.

62.4.3 "Certified Claim" is a Claim that the Tribal Council has certified as complying with all procedural requirements and stating a prima facie case that a Claimant has sustained a Compensable Injury.

62.4.4 "Claim" is the written document, together with such supporting information as a Claimant may wish to provide, alleging a Compensable Injury to person or property that is prepared by the Claimant and delivered to the Tribal Council as provided herein.

62.4.5 "Claimant" is the individual who submits a Claim to the Tribal Council.

62.4.6 "Tribe" shall mean the Hoopa Valley Tribe, its departments and entities.

§ 62.5 PRESENTATION OF CLAIMS AS PRE-REQUISITE FOR FILING SUIT

All claims against the Lucky Bear Casino for injury to person or property shall be presented to the Tribal Council and acted upon as a prerequisite to filing a lawsuit thereon as further provided herein. All such claims shall be presented as required by this Ordinance and in the time periods specified herein.

§ 62.6 CLAIMS SUBJECT TO FILING REQUIREMENTS

The claims subject to the filing requirements under this Ordinance shall include, but not be limited to, any and all claims for injury to person or property as a result of the negligent act or omission of the Lucky Bear Casino; and any and all claims by any federal, state, or local public entity. The provisions of this Ordinance shall apply to any and all claims that relate to events, transactions, or occurrences that take place after the effective date of this Ordinance.

§ 62.7 CONTENT OF CLAIM

A claim shall be presented by the claimant or by a person acting on the claimant's behalf and shall include the following:

- (A) the name and address of the claimant;
- (B) the address to which the person presenting the claim desires notices to be sent;
- (C) the date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted;
- (D) a general description of the indebtedness, obligation, injury, damage, or loss incurred so far as it may be known at the time of presentation of the claim;
- (E) the name or names of the Tribal employee or employees causing the injury, damage, or loss, if known; and

- (F) the amount claimed as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of the presentation of the claim, together with the basis of computation of the amount claimed.

§ 62.8 SIGNATURE OF CLAIMANT

The claimant, or some person with personal knowledge of the claim on the claimant's behalf, shall sign the claim.

§ 62.9 FORMS

The Tribal Council may provide forms specifying the information to be contained in claims against the Tribe or any of its business enterprises. If the Tribal Council provides forms pursuant to this Section, the person presenting the claim need not use such form if he/she presents his/her claim in conformity with Sections 62.7 and 62.8. A claim presented on a form provided pursuant to this Section shall be deemed to be in conformity with Sections 62.7 and 62.8, if the claim complies substantially with the requirements of the form or with the requirements of said Sections.

§ 62.10 AMENDMENT OF CLAIM; EFFECT OF FAILURE OR REFUSAL TO AMEND

A claim may be amended at any time before the expiration of the period designated in Section 62.13 or before final action thereon is taken by the Tribal Council of the Tribe, whichever is later, if the claim, as amended, relates to the same transaction or occurrence which gave rise to the original claim. The amendment shall be considered a part of the original claim for all purposes.

§ 62.11 NOTICE OF INSUFFICIENCY OF CLAIM

If, in the sole discretion of the Tribal Council for the Tribe or the person designated by it, a claim as presented fails to comply substantially with the requirements of this Ordinance or the requirements of a form provided under this Ordinance, the Tribal Council for the Tribe or such person may, at any time within twenty (20) days after the claim is presented, give written notice of its insufficiency, stating with particularity the defects or omissions therein. Such notice shall be given in the manner prescribed by this Ordinance. The Tribal Council for the Tribe may not take action on the claim for a period of fifteen (15) days after such notice is given.

§ 62.12 FAILURE TO GIVE NOTICE OF INSUFFICIENCY; WAIVER OF DEFENSE BASED ON DEFECT OR OMISSION

Any defense as to the sufficiency of the claim based upon a defect or omission in the claim as presented is waived by failure to give notice of the insufficiency with respect to such defect or omission as provided in Section 62.11, except that no notice need be given and no waiver shall result when the claim, as presented, fails to state either an address to which the person presenting

the claim desires notice to be sent or an address of the claimant.

§ 62.13 TIME FOR PRESENTATION OF CLAIMS

A claim relating to a cause of action for death or for injury to a person or to personal property shall be presented as provided for in this Ordinance, not later than the thirtieth (30th) day after the accrual of the cause of action.

§ 62.14 GRANT OR DENIAL OF CLAIM BY TRIBAL COUNCIL

(A) The Tribal Council shall grant or deny the claim within sixty (60) days after it is presented to the Tribal Council. The claimant and the Tribal Council may extend the period within which the Council is required to act on the claim by written agreement made before the expiration of such period.

(B) If the Tribal Council fails or refuses to act on the claim within the time prescribed by this Section, the claim shall be deemed to have been denied on the sixtieth day or, if the period within which the Tribal Council is required is extended by agreement, pursuant to this Section, the last day of the period specified in such agreement.

§ 62.15 NOTICE OF REJECTION OF CLAIM

(A) Written notice of the rejection of the claim or the Tribal Council's inaction on the claim, which is deemed a rejection of the claim under this Ordinance, shall be given in a manner provided in Section 62.16. Such notice may be in substantially the following form:

"Notice is hereby given that the claim which you presented to the Tribal Council of the Hoopa Valley Indian Tribe on ____ *[indicate date]* was *[indicate whether rejected, allowed, allowed in the amount of \$ _____ and rejected as to the balance, rejected by operation of law, or other appropriate language, whichever is applicable]* on *[indicate date of action or rejection by operation of law]*."

(B) If the claim is rejected in whole or in part, the notice required by Subdivision (A) above shall include a warning in substantially the following form:

"WARNING"

If your claim was based upon death or injury to a person or personal property, you have only thirty (30) days from the date this notice was personally delivered or deposited in the mail to file a court action on this claim before the Hoopa Valley Tribal Court. You may seek the advice of an attorney of your choice at your own expense in connection with this matter. If you desire to consult an attorney, you should do so immediately."

§ 62.16 MAILING OR SERVICE OF NOTICE

The notice required by Section 62.15 shall be deemed given when it is either: (1) personally delivered to the claimant or the claimant's representative as specified in the claim or (2) when deposited in the United States mail addressed to the claimant or the claimant's representative as specified in the claim, first class postage prepaid.

§ 62.17 RE-EXAMINATION OF REJECTED CLAIM

The Tribal Council may, in its discretion, within the time described by Section 62.15 for commencing an action on the claim, re-examine a previously presented claim in order to consider a settlement of the claim.

§ 62.18 TRIBAL COURT AUTHORITY

The Hoopa Valley Tribal Court shall have exclusive jurisdiction to adjudicate actions commenced pursuant to this Ordinance. Any action commenced pursuant to this Ordinance shall be initiated in accordance with the applicable rules of the Hoopa Valley Tribal Court, including payment of appropriate filing fees. The Hoopa Valley Tribal Court shall have authority to determine the following issues: 1) the Tribal Council's rejection of a claim for failure to timely comply with the procedures established in this Ordinance or allege a Compensable Injury; 2) the Tribal Council's or Tribal Gaming Agency's denial of a Certified Claim for a Claimant's failure to establish by a preponderance of evidence that the Tribe is liable to the Claimant on a Certified Claim; 3) the adequacy of an Award granted on a Certified Claim; or 4) the failure of the Tribe or its insurer to timely pay an Award.

§ 62.19 EXHAUSTION OF ADMINISTRATIVE REMEDIES

To be entitled to seek judicial review of Tribal Council action to deny, reject, or modify a claim, or otherwise fail to pay a claim pursuant to this Ordinance, the Claimant must first exhaust their administrative remedies as provided by this Ordinance. Failure to comply with the administrative requirements of this Ordinance is a jurisdictional defect and the Hoopa Valley Tribal Court shall deny any relief requested for lack of jurisdiction.

§ 62.20 LIMITATION OF ACTIONS

This Ordinance does not provide for and does not include coverage for any injury allegedly sustained by a Tribal official, agent or employee in connection with his/her employment or performance of official duties, any injury allegedly sustained by a Tribal member or any person eligible for enrollment in the Tribe, any claim for punitive or exemplary damages, any injury proximately caused by a negligent act that was committed outside the course and scope of the employment and/or authority of a Tribal official(s), employee(s) or agent(s) whose act(s) or omission(s), or any injury proximately caused by the act or omission of any person who is not an officer, employee or agent of the Tribe or who is not otherwise directly subject to the Tribe's

direction, supervision or control. For the purposes of this Ordinance, a Claim may not be certified if the person or entity alleged to have been the proximate cause of a Compensable Injury was not, at the time the injury was sustained, either an elected or appointed official of the Tribe, an employee or agent of the Tribe, or party to a contract with the Tribe in connection with the operation or maintenance of a Tribal Gaming Facility. The Tribe specifically disclaims, and shall not be liable or responsible for, any acts or omissions committed by any patron of a Tribal Gaming Facility.

§ 62.21 STATUTE OF LIMITATION

Claimant shall file any lawsuit pursuant to this Ordinance within thirty (30) days of the date the notice of rejection of claim, modification of claim or other failure to pay the Claimant was personally delivered or deposited in the mail for delivery to Claimant or upon the date that such determination occurred by operation of law.

§ 62.22 ATTORNEYS' FEES AND PUNITIVE DAMAGES

Nothing herein shall be construed as authorizing the award of attorneys' fees or punitive damages as against the Tribe or any of its enterprises, officers, agents or employees.

§ 62.23 LIMITATION ON ATTORNEYS' FEES

No attorney representing a Claimant pursuant to this Ordinance shall charge, demand, receive, or collect from the Claimant for services rendered on the Claim, fees in excess of twenty-five percent (25%) of any judgment, settlement, or award rendered or paid by the Tribe or its insurer to the Claimant. Each attorney who appears on behalf of a Claimant must be admitted to the Hoopa Valley Tribal Bar.

§ 62.24 AWARD LIMITED TO POLICY LIMITS

The Tribe shall not be obligated to pay any award that is not covered by, or exceeds the policy limits of, the Tribe's liability insurance. The Tribe's insurer shall pay any cognizable award in the same manner and at the same time as judgments rendered in the courts of the United States.

§ 62.25 APPEALS

The Claimant may appeal a final decision as to liability or the amount of damages awarded, based upon the evidentiary record presented to the Hoopa Valley Tribal Court in accordance with the rules regarding the filing of appeals in the Hoopa Valley Tribal Court system.

§ 62.26 SEVERABILITY

If any part of this Ordinance is held to be invalid the remainder shall remain in full force and effect to the maximum extent possible.

§ 62.27 SOVEREIGN IMMUNITY

Nothing in this Ordinance shall be deemed to waive the sovereign immunity of the Hoopa Valley Indian Tribe or any of its enterprises, officers, agents, or employees, except to the extent of insurance coverage in effect at the time of the accrual of the claim provided that nothing herein shall authorize the award of attorney's fees or punitive damages as against the Hoopa Valley Indian Tribe or any of its enterprises, officers, agents, or employees.

§ 62.28 EFFECTIVE DATE, AMENDMENT

This Ordinance shall take effect upon its adoption by the Council and shall have retroactive effect to May 16, 2000. This Ordinance may be amended as provided by and in accordance with the Legislative Procedures Act.

CERTIFICATION

I, the undersigned as Chairman of the Hoopa Valley Tribal Council, do certify that the Hoopa Valley Tribal Council is composed of eight (8) members of which seven (7) were present, constituting a quorum, at a special meeting thereof, duly and specially called, noticed, convened and held this 20th day of July, 2000; and that this Ordinance was adopted by a vote of six (6) for; none (0) opposed; and none (0) abstaining, and that since approval, this Ordinance has not been rescinded, amended, or modified in any form.

Dated this 20th day of July, 2000

DUANE J. SHERMAN, SR., CHAIRMAN
Hoopa Valley Tribal Council

Attest: _____
Darcy Baldy, Executive Secretary
Hoopa Valley Tribal Council